IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6393 of 2005
With
SPECIAL CIVIL APPLICATION No. 6395 of 2005
To
SPECIAL CIVIL APPLICATION No. 6400 of 2005

For Approval and Signature:

HON'BLE MR JUSTICE AKIL KURESHI

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DEVUSING RAMSANGJI THAKORE & 7 - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR PM BHATT for Petitioner No(s).: 1,2,3,4,5,6,7.

Mr PR Abichandani, AGP for the respondents.

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CORAM :HON'BLE MR JUSTICE AKIL KURESHI

Date : 20/06/2005

ORAL JUDGMENT

Rule. Learned AGP Shri Pitamber Abichandani waives service of rule on behalf of the respondents. At the joint request of the learned advocates appearing for the parties, these petitions are taken up for final disposal today.

2.The petitioners herein complain of the action on the

part of the respondents in contending that the possession of 843 sq. meters of land out of 2433 sq. meters of land bearing survey No.281/1 of Vejalpur belonging to the petitioners has been taken as excess urban land. It is the case of the petitioners in this group of petitions that though earlier adverse orders were passed against the petitioners by the Competent Authority under the Urban Land (Ceiling and Regulation) Act, 1976 on 10.1.84 and 8.7.86 in further proceedings carried by the petitioners, these orders came to be set aside. By the order dated 19.2.90, the Deputy Secretary, Revenue Department, Government of Gujarat found that each individual petitioner holds land in excess of the ceiling limit only to the extent of 45 sq. meters and accordingly the orders dated 10.1.84 and 8.7.86 came to be set aside. It was additionally provided in the said order dated 19.2.90 that the excess vacant land falls under the 10 per cent margin area and that therefore under the powers conferred under section 20 of the said Act, the petitioners are permitted to retain the said land by giving necessary exemption. It is the case of the petitioners that despite this clear order dated 19.2.90, unauthorizedly, the respondents sought to take possession of total area of 843 sq. meters of land. It is, therefore, the case of the petitioners that the

action of the respondents is wholly illegal, unlawful and unauthorized. It is contended on behalf of the petitioners that the actual physical possession of the land in question was never taken away by the respondents and till date the petitioners are in actual physical possession of the land in question. It is also contended that the revenue entries were made in the revenue record after repeal of the Ceiling Act. Such entries even otherwise do not reflect the correct position and therefore the same should be corrected.

3. Appearing for the respondents, learned GP Shri Pitambar Abichandani places on record the para-wise remarks received by him from the Government. On the basis of these remarks, he pointed out that there is no dispute about the fact that in view of the subsequent order dated 19.2.90, earlier adverse orders passed against the petitioners on 10.1.84 and 8.7.86 lost their validity. He also pointed out from the para-wise remarks that the action of taking away of the land in question on 28.3.94 was entirely on account of oversight and in ignorance of the order dated 19.2.90. In fact, there is a clear statement in the para-wise remarks that by virtue of the order dated 19.2.90, the proceedings for taking possession of the lands in question undertaken on 28.3.94 are rendered ineffective.

4. In view of this clear admission on the part of the respondents, it appears that the attempt to take possession of the lands in question by the respondents was on account of the ignorance of the order dated 19.2.90 passed by the Government. Admittedly by the said order, each of the petitioners was permitted to retain 45 sq. meters of excess vacant land and no portion of their holding was declared as excess vacant land of which the possession was to be taken over by the Government. In the result, subsequent proceedings for taking away the possession of the land in question would be rendered ineffective and impermissible and the respondents erred in seeking to take possession of the land in question.

5. In view of the above discussion, proceedings for taking away the possession of the petitioners' abovementioned land are quashed and set aside. In view of the statement of the petitioners that they are in actual physical possession of the land in question, it would not be necessary to restore the physical possession to them. The revenue entries contrary to the above factual and legal position shall have to be rectified and the authorities shall initiate appropriate steps to correct the revenue entries.

6. With the above directions, the petitions are allowed.

Rule is made absolute to the above extent with no order as to costs.

(**Akil Kureshi, J.**)

(vjn)